

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN KELLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 4:20-cv-00283-O
v.)	
)	
XAVIER BECERRA, <i>et al.</i> ,)	
)	Judge Reed O'Connor
Defendants.)	
)	
)	
)	

**UNOPPOSED MOTION OF 20 HEALTH POLICY EXPERTS, THE AMERICAN
PUBLIC HEALTH ASSOCIATION, AND THE ASSOCIATION OF AMERICAN
MEDICAL COLLEGES FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
PURSUANT TO LOCAL RULE 7.2(b)**

Pursuant to Federal Rule of Civil Procedure 7(b) and this Court's Local Rule 7.2(b), proposed *amici curiae* move for leave to file the attached brief *amici curiae* in support of Defendants' Motion for Summary Judgment. Counsel for all parties have consented to the filing of the attached brief.

IDENTITY OF AMICI CURIAE

The *amici curiae* are a group of 20 distinguished professors and researchers from the disciplines of economics, public health, health policy, and law, who are experts with respect to the economic and social forces operating in the health care and health insurance markets. *Amici curiae* also includes the American Public Health Association and the Association of American Medical Colleges.

The American Public Health Association (“APHA”), which was founded in 1872, is a Washington, D.C.-based professional organization for public health professionals in the United States. APHA represents more than 22,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community and the ability to influence federal policy to improve the public’s health.

The Association of American Medical Colleges (“AAMC”) is a nonprofit association dedicated to transforming health through medical education, health care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; more than 400 teaching hospitals and health systems; and more than 70 academic societies.

INTEREST OF AMICI CURIAE

Amici have closely followed the development, adoption, and implementation of the Affordable Care Act (“ACA”). They are familiar with the structure of the program and the defects in our health care system this program was enacted to remedy. They understand the importance of preventive health services and screening.

ARGUMENT

Local Rule 7.2(b) of the U.S. District Court for the Northern District of Texas permits the filing of amicus briefs with leave of the presiding judge. “The extent to which the court permits or denies amicus briefing lies solely within the court’s discretion.” *Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007). “Factors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is ‘timely and useful’ or otherwise necessary to the administration of justice.” *Id. quoting Waste Management of Pa. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995).

Amici submit this brief to assist this Court to understand the nature and importance of the ACA's requirement that insurers and health plans provide preventive health services and screening and immunization without cost sharing. *Amici* will also explain why the history and structure of the U.S. Preventive Services Task Force ("USPSTF"), the Advisory Committee on Immunization Practices ("ACIP"), and the Health Resources and Services Administration ("HRSA") make them appropriate organizations for identifying preventive services and why the role of these organizations violates neither the Appointments nor the Vesting Clause of the Constitution. Finally, *amici* will explain why the language of 42 U.S.C. § 300gg-13 provides clear intelligible principles for these entities to exercise their discretion given Congressional understanding of this language.

Local Rule 7.2(b) does not set forth a deadline for proposed *amici curiae* to seek leave, however, this motion and accompanying brief is being filed within seven days of the filing of Defendants' Motion for Summary Judgment, which is consistent with Federal Rule of Appellate Procedure 29. *Gudur*, 512 F. Supp. 2d at 927 ("Federal Rule of Appellate Procedure 29 sets forth standards for filing an amicus brief in the United States Courts of Appeals, and in the absence of controlling authority, district courts commonly refer to Rule 29 for guidance."); see Fed. R. App. P. 29 ("An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.").

CONCLUSION

The attached brief *amici curiae* is timely, as it was filed within seven days after Defendants' Motion for Summary Judgment, and is useful, as it will assist this Court's effort to resolve the questions before it.

Therefore, proposed *amici curiae* respectfully request that this Court grant them permission to file an *amicus curiae* brief in support of Defendants' Motion for Summary Judgment. Pursuant to Local Rule 7.1(c), a proposed order is attached.

Dated: February 4, 2022

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(b), I hereby certify that counsel for Amici conferred with counsel for the Plaintiffs and counsel for the Defendants regarding filing this motion. Counsel for all parties indicated that they did not object.

Dated: February 4, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 4, 2022, I caused the foregoing document to be electronically submitted with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have caused service to be made on all parties who have appeared in the case electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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